

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

CI 20,794

In re: 3133 Connecticut Avenue, N.W.

Ward Three (3)

KLINGLE CORPORATION
Housing Provider/Appellant/Cross-Appellee

v.

TENANTS OF 3133 CONNECTICUT AVENUE, N.W.
Tenants/Appellee/Cross-Appellants

ORDER ON MOTIONS TO STAY PROCEEDING

March 21, 2008

YOUNG, CHAIRPERSON. This case is on appeal to the Rental Housing Commission (Commission) from a decision and order issued by the Rent Administrator, based on a petition filed in the Rental Accommodations and Conversion Division (RACD). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004), govern the proceedings.

I. THE PROCEDURES

On November 5, 2003, Klingle Corporation filed capital improvement (CI) petition 20,794 to install new windows building-wide in 317 rental units at the housing accommodation named the Kennedy - Warren. On January 12, 2004 a hearing was held in the Housing Regulation Administration (HRA) by Hearing Examiner Carl Bradford.

On March 24, 2004, the hearing examiner issued the decision and order. On April 9, 2004, the Tenants filed a notice of appeal in the Commission, which held its appellate hearing on September 21, 2004. On January 26, 2006, the Commission issued its decision and order, the Commission's decision concluded:

The Commission, in issue one, held that the Rent Administrator had jurisdiction to hear and decide the issues in this capital improvement petition. In issue two, the Commission held the rent increase amount was not before the Commission, only the rent surcharge or rent ceiling increase. In issues three and four, the Commission held that KWRA did not put in evidence its membership and that was a fatal error which prevented the hearing examiner determining whether KWRA represented a majority of the Tenants, and which Tenants appeared before both the Rent Administrator and the Commission. The fifth issue is remanded for a determination of the number of rental units where the windows were installed before the expiration of the 60 day waiting period in the Act, and a reduction of the rent ceiling surcharge to reflect the failure of the housing provider to wait 60 days to install the windows in those rental units.

Tenants of 3133 Connecticut Ave., N.W. v. Klingle Corp., CI 20,794 (RHC Jan. 27, 2006) at 11.

On March 2, 2007, the Rent Administrator issued the remand decision and order. in Klingle Corp. v. Tenants of 3133 Connecticut Ave., N.W., CI 20,794 (RACD Mar. 2, 2007). On March 7, 2007 Klingle Corp filed its notice of appeal of the Rent Administrator's decision. On March 30, 2007 the Kennedy-Warren Residents Association (KWRA) filed a notice of appeal on behalf of itself and its members.

On February 21, 2008, counsel for KWRA, Carol S. Blumenthal, Esquire, filed a Motion to Stay Proceeding. On March 11, 2008, Tenant/Appellee/Cross-Appellant, Michael W. Dolan also filed a Motion to Stay Proceeding. On March 10 and 11, 2008, Tenants Blake J. Nelson, Wendy Nelson, Kenneth A. Mazzer and Wendy Tiefenbacher filed partial opposition to Michael W. Dolan's motion. In his motion the Tenant stated:

1. On information and belief, the Housing Provider has submitted a proposed Voluntary Agreement to the Rent Administrator which has been approved by 94% to 96% of the tenants of 3133 Connecticut Avenue, N.W.
2. The Housing Provider has agreed with the individual tenants who have signed the 70% Voluntary Agreement to refund \$179.00 capital improvement surcharge that is the subject of this proceeding provided that the Voluntary Agreement is approved by the Rent Administrator and the Housing Provider determines to proceed in the face of any actual or threatened litigation that challenges the Voluntary Agreement.
3. Because there is a substantial likelihood that this proceeding may be mooted, at least for tenants who have agreements with the Housing Provider, it would appear to be in the interest of judicial and administrative economy of effort and expense that this proceeding by [sic] stayed pending determination by the Rent Administrator and the Housing Provider with respect to the 70% Voluntary Agreement.

Dolan Motion To Stay Proceeding at 1-2. The motion submitted by counsel for KWRA stated similar grounds for their request for a stay.

II. THE COMMISSION'S ORDER

A motion for stay pending appeal is governed by the Commission's rules, 14

DCMR § 3805 (2004). The applicable rule provides:

A party appealing a final decision of the Rent Administrator which awards other than the payment of money as provided in §§3802.10 and 3802.11 may seek a stay of the final decision by filing a motion which complies with the provision of this section and §3814.

14 DCMR 3805.1 (2004). Where the final decision of the Rent Administrator awards the payment of money, the Commission's regulations, 14 DCMR §§3802.10 & 3802.11 (2004),¹ apply.

¹ The applicable regulation, 14 DCMR §§ 3802.10-11 (2004) state:

Any party appealing a decision of the Rent Administrator which orders the payment of money may stay the enforcement of such decision by establishing an escrow account or purchasing a supersedeas bond which complies with the requirements of § 3806 within five (5) days of filing the notice of appeal.

The court interpreted these regulations in Hanson v. District of Columbia Rental Hous. Comm'n, 584 A.2d 592, 595 (D.C. 1991). The court stated:

[T]he Commission action was not 'final' and could not be enforced in the trial court until after judicial review of the agency's action was completed or the appeal period has expired. (citation omitted). If Commission actions cannot be judicially enforced, then it would seem to follow logically that RACD decisions of the hearing examiner also cannot be enforced until appellate review has been exhausted. (citation omitted). If the decisions of the hearing examiner cannot be enforced until after judicial review, then there is no need for rules requiring a motion to stay since decisions of the examiner are, in effect, automatically stayed. Since the regulations were inconsistent with the doctrine of primary jurisdiction, the Commission was not bound to follow them. (citation omitted.) (emphasis added.)

Cited in Lamb v. Anari, Inc., TP 27,666 (RHC July 3, 2003); Oxford House-Bellevue v. Asher, TP 27,583 (RHC June 10, 2003), Redman v. Graham, TP 24,681 (RHC Nov. 21, 2002 & Jan. 6, 2003). In the instant case, the decision of the Rent Administrator ordered the payment of money. Accordingly, the Commission denies the motions for stay pursuant to its regulations at 14 DCMR § 3805 (2004). The Commission has rules relating to continuances of proceedings. See 14 DCMR 3815 (2004). The Commission does not have rules on stays of proceedings. However, when the Commission's rules are silent on a procedural issue, the Commission refers to the rules of the District of Columbia Court of Appeals (DCCA) for guidance. Radwan v. District of Columbia Rental Hous. Comm'n, 683 A.2d 478 (D.C. 1996); 14 DCMR § 3828.1 (1998).

The payment of money described in §3802.10 shall include the award of rent increases to a housing provider. Establishment of an escrow account or the purchase of a supersedeas bond pursuant to § 3802.10 shall be based on at least six (6) months of the rent increase per party appealing; Provided, that the escrow may be paid in monthly deposits during the pendency of the appeal and the appellee shall be notified of the deposits.

The Court's rules provide:

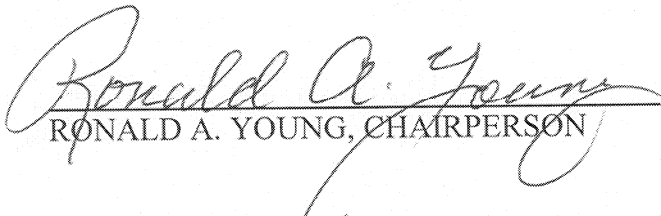
RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

...

(g) **Power of Appellate Court Not Limited.** This Rule does not limit the power of an appellate court to stay a judgment or make any other order with respect to the judgment during the pendency of an appeal.

The Commission recognizes the parties attempt to settle this litigation, at least in part, by means of a 70% Voluntary Agreement between the Tenants and the Housing Provider. Settlement of litigation is to be encouraged. See Proctor v. District of Columbia Rental Hous. Comm'n, 484 A.2d 542 (D.C. 1984). In light of the parties attempt to settle this litigation, the Commission, sua sponte, **CANCELS** the appellate hearing scheduled for Tuesday, March 26, 2008 at 2:00 p.m., and **GRANTS** a continuance in these proceedings until Tuesday, May 13, 2008 at 2:00 p.m.

SO ORDERED


RONALD A. YOUNG, CHAIRPERSON

MOTION FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004) provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia

Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W.
6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTIONS TO STAY PROCEEDING** in CI 20,794 was mailed by priority mail, with confirmation of delivery, postage prepaid this **21st day of March, 2008**, to:

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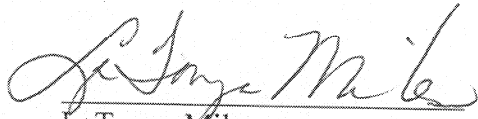
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